The court calls attention to the fact that in a large number of states the constitutional provision merely requires the stock to be issued for money or property, but does not, as in Oklahoma, require that the value received shall equal the par value of the stock. Decisions which hold that under provisions of that kind stock issued in good faith is valid, are therefore not in point in Oklahoma. The application of the rule to the *bona fide* purchaser for value may at first sight seem harsh, but the court leaves open the question of whether he would have an action for damages against the corporation or its officers, merely deciding that he is not entitled to retain his stock certificates or to have his name remain on the list of stockholders. The decision seems to carry out the obvious intention of the framers of the Oklahoma constitution.

FOREIGN CORPORATIONS—RIGHT TO SUE—INSTALLATION OF MACHINERY NOT LOCAL BUSINESS.—A Pennsylvania manufacturing corporation contracted with residents of Texas for the sale of an ice plant which was to be shipped from Pennsylvania, installed in Texas under the supervision of the seller's superintendent, and tested by him before the purchasers were obliged to accept it. The corporation, having performed its part of the contract, brought suit for the contract price, and was met by a plea that it had transacted business in Texas without having obtained a permit therefor and hence under Texas statutes was not authorized to prosecute its suit. *Held,* that the suit was maintainable, since the installation of the machinery was incidental to its sale in interstate commerce. Pitney, J., *dissenting. York Mfg. Co. v. Colley* (1918, U. S.) 38 Sup. Ct. 430.

The Texas courts had denied the plaintiff's right to maintain its suit on the strength of *Browing v. Waycross* (1914) 233 U. S. 16, 34 Sup. Ct. 578. That case held that the erection of lightning rods as incidental to an interstate sale of them was local business. Similarly, it had been held that the installation of an automatic railway signal system, including the digging of trenches for conduits for the wires, was local business. *General Ry. Sig. Co. v. Virginia* (1918, U. S.) 38 Sup. Ct. 360. The principal case distinguishes these decisions on the ground that in them the service to be performed in the foreign state was not essentially connected with and inherently related to the subject matter of the sale, while here it was. The distinction is obviously sound but not always easy of application.

MONOPOLIES—SHERMAN ACT—PRICE-FIXING FOR CERTAIN HOURS OF THE DAY.—By a rule of the Chicago Board of Trade members were forbidden to buy or offer to buy, during the hours between the closing of one day's session and the opening of the next, grain "to arrive" in Chicago, that is, grain then in transit to that city, at a price other than the closing bid of the session. Purchases of grain "to arrive" constituted a small proportion of the total transactions in grain, the greater part being "spot sales" and "future sales." *Held,* that the rule above stated was not in violation of the Sherman Anti-Trust Act. *Board of Trade v. United States* (1918, U. S.) 38 Sup. Ct. 242.

This case illustrates very well the operation of the modern and rational construction of the Sherman Act under the principles first enunciated in *Standard Oil Co. v. United States* (1911) 221 U. S. 1, 31 Sup. Ct. 502. The Board of Trade rule, during the hours of its operation, eliminated all competition between members of the Board of Trade in respect to prices for grain "to arrive"; but it affected only a small part of the grain coming to Chicago, left other important grain markets open to competition, operated only for certain hours of the day,—chiefly not regular business hours—and the price which it

fixed for those hours each day was a price established by competitive bidding on the Board. The court therefore found as the decisive fact that it "had no appreciable effect on general market prices"; and as good business reasons appeared for the adoption of the rule, which, within its narrow limits, was shown to have improved market conditions and even promoted competition in certain respects enumerated by the court, the decision sustaining its legality very properly followed. For other discussions of the "rule of reason" as applied to the construction of the Sherman Act, see COMMENTS, p. 1060, *supra*, and (1917) 27 YALE LAW JOURNAL, 139.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF CHILD—CONSTRUCTION OF STATUTE.—The New Jersey Railroad Law (3 Comp. St. 1910, p. 4245) sec. 55, declares that if "any person shall be injured by an engine or car while walking, standing or playing on any railroad," except at lawful crossings, he shall be deemed to have contributed to the injury sustained and shall not recover damages. The plaintiff, a boy less than seven years old, had been playing marbles near a railroad siding and was injured by the moving of a car while he was trying to extricate his marble from under the car. *Held*, that the plaintiff was barred from recovery. Day and Clarke, JJ., *dissenting*. *Erie R. R. Co. v. Hilt* (1918, U. S.) 38 Sup. Ct. 435.

The lower federal courts had construed this statute merely as declaratory of the common law and not as declaring with sufficient clearness an intention to charge children, however immature, with contributory negligence. *Erie R. R. Co. v. Swiderski* (1912, C. C. A. 3d) 197 Fed. 521. A state court had taken the opposite view. *Barcolini v. Atlantic City, etc. Co.* (1911, Sup. Ct.) 82 N. J. L. 107, 81 Atl. 494. The principal case follows the construction of the state court, although not the court of last resort in the state, and seems to approve such construction. It appears a rather harsh interpretation of the statute, and the arguments of the lower federal courts are thought to be more persuasive.

PUBLIC SERVICE CORPORATIONS — REGULATION OF RATES — REGULATION OF WATER COMPANY WHOSE FRANCHISE HAD EXPIRED.—After the expiration of the complainant water company's franchise the City of Denver passed an ordinance declaring the company to be a mere tenant at sufferance and fixing the rates it should thereafter charge. The company contended that these rates were confiscatory and sued to enjoin the enforcement of the ordinance. *Held*, three judges dissenting, that the company was entitled to an injunction, that the rate ordinance should be construed as granting a franchise of indefinite duration, and that in determining the reasonableness of its rates the plant was to be valued as a plant in use and the item of "going value" was to be considered. *Denver v. Denver Union Water Co.* (1918, U. S.) 38 Sup. Ct. 278.

The case is of interest both in respect to the holding that the regulatory ordinance granted a license for an indefinite term, and in respect to the reaffirmation of the rule that "going value" is an element to be considered in rate regulation. For a discussion of the latter point, see (1918) 27 YALE LAW JOURNAL, 386.

STATUTE OF FRAUDS—PAROL AGREEMENT WITH TENANT IN POSSESSION FOR FUTURE TENANCY—HOLDING OVER AFTER LANDLORD'S REPUDIATION.—A landlord agreed with the tenant in possession under a lease expiring July 31, 1915,